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Senate

The Senate met at 10 a.m. and was called to order by the Honorable JON TESTER, a Senator from the State of Montana.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal Spirit, the giver of every good and perfect gift, we are sinful people seeking salvation. We are lost people seeking direction. We are doubting people seeking faith. Teach us, O God, the way of salvation. Show us the path to meaningful life. Reveal to us the steps of faith.

Today, use the Members of this body to fulfill Your purposes. Quicken their hearts and purify their minds. Broaden their concerns and strengthen their commitments. Show them duties left undone, remind them of vows unkept, and reveal to them tasks unattended. Lead them, Father, through this season of challenge to a deeper experience with You. Then send them from Your presence to be Your instruments of good in our world.

We pray in the Name of Him who is our hope for years to come. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JON TESTER led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, January 29, 2008.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JON TESTER, a Senator from the State of Montana, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. TESTER thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. REID. Mr. President, we will have morning business for 1 hour after the two leaders make any statements they might make. As to what we do after that will take a conversation with the Republican leader, and we will do that when we finish our statements. We have a number of things that are pending: the FISA legislation, Indian health, and we have another matter I want to complete, an energy bill. We have an agreement as to how to finish that, and we will move to one of those, more than likely, today.

STIMULUS PACKAGE

Mr. REID. Mr. President, the Finance Committee on a bipartisan basis has worked up what they feel is something they are going to bring before the full committee tomorrow, and that will take place—we will get their take on the stimulus package tomorrow. We have all seen the press today. Everyone knows the Senate is going to put their mark on the stimulus package. We feel what will be done will be very stimulative to the economy. It includes, as I understand it, some 20 million seniors

who were left out of what has taken place in the House. There will be unemployment benefits. A number of States are in very difficult shape in that regard. They have some other things dealing with the business package, and I am told that advocacy groups like very much what is in the Senate package. But we will work through this and try to get something done very quickly so that, if there are changes made, we can do a very quick conference and get it to the President. That is an important issue.

FISA

Mr. REID. Mr. President, I want everyone—especially my Republican colleagues and especially the people in the White House—to listen to what I am going to say. FISA, if we don't do something on it today, will expire. It will be out of business. The House is going out of session tonight, so unless we get to them the 30-day extension we have tried to move forward five or six times, unless we have an extension of 18 months, a year, 2 weeks, whatever the Republicans think is appropriate—if they think nothing is appropriate—then the full brunt of this law expiring is on their shoulders because it is virtually legislatively impossible to get anything done today. Remember, the House has already done what they are going to do. If we took what the Intelligence Committee passed, which is likely not going to happen, we would have to have a conference with the House. They are going out of session tonight. They are out of town on Wednesday and Thursday and Friday. So unless we do something today, the bill is not going to be enacted and the legislation we passed last August will expire.

Now, the orders that have been sought and accomplished during the time since last August will still be in effect, and, of course, there will be an opportunity under the old FISA law to

• This “bullet” symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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work on an emergency basis for new things they want to do.

We want to maintain the ability to go after the bad people. We believe there is a necessity for intercepting telephone conversations between people who are trying to do bad things. We think it should be within the constitutional framework, and we believe that is what the Intelligence Committee and the Judiciary Committee have done. But I again say, without getting into any details, unless we do something today, unless someone can explain to me how we can pass something here in a matter of a few hours, how we can have a conference with the House in a matter of a few hours and then bring those two conference reports to the House and the Senate in a few hours—I say that is legislatively impossible.

So I am saying again to my Republican colleagues: Agree to some extension of time or the burden of this legislation not passing is on your shoulders because we have had no attempt to legislate. We have not had the opportunity to offer amendments, let alone vote on them.

Our goal is to provide the intelligence community with all of the legal tools it needs, while protecting the privacy of law-abiding Americans. So I would hope that in the next hour or so, we can work something out before the House leaves town or nothing will have been accomplished.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The Republican leader is recognized.

FISA

Mr. McCONNELL. Mr. President, we have known we needed to get the FISA law extended for 6 months—6 months. I have also heard it suggested that somehow, little or no harm would be done if the law were allowed to expire. Well, that is simply incorrect. The ability to go after new targets would be eliminated with the expiration of this bill in 3 days. So here we are with 3 days to go, and I gather from listening to my good friend on the other side, the very real possibility is that there is at least some willingness on the part of some on the other side to just let the law expire.

Now, contrary to what some are saying, the expiration of this important antiterrorist tool has serious consequences; that is, if we don't get this job done, the notion that somehow it doesn't make any difference is certainly not true. Let me say again: Once it expires, intelligence officials will no longer be able to gather intelligence on new—new—foreign terrorist targets. The terrorists are not going to stop planning new attacks just because we stop monitoring their activities. Our enemies are watching. They know our

intelligence capabilities will be degraded once the Protect America Act expires. That is why we need to reauthorize FISA in such a way that we retain its full—its full—terror-fighting force. The Senate Intelligence Committee's version does just that. That is the Rockefeller-Bond bipartisan proposal that came out of committee 13 to 2. Senate Republicans stand ready to finish that good work the committee did and the administration began.

We have proposed a list of several amendments to our colleagues on the other side that could receive votes. I know those discussions are ongoing, and hopefully we can begin to have some votes. But we do not have the time to rebuild amendment by amendment a Judiciary Committee version that a bipartisan majority of the Senate has already defeated. It wouldn't become law even if we passed it.

Now, Republicans are ready to provide a short-term extension of the Protect America Act to keep the Senate focused on the importance of this critical terror-fighting tool. But after 10 months of waiting, we do not need—and the country cannot afford—another month of delay.

We await the response of our Democratic colleagues to our amendment proposal, and those discussions, as I indicated, are going forward, and we look forward to finishing the job in a way that allows our intelligence professionals to keep us safe from harm.

I yield the floor.

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

Mr. REID. Mr. President, we understand the implication of the legislation that is now in effect and will expire Thursday. We understand that. We understand there are new targets our intelligence officials may want to go after. We understand that. But I repeat: Using the words of my friend, the Republican leader, once it expires, if it expires, it is on the shoulders of the White House and the Republicans in the Senate. We have attempted to work through this, and we have been willing to extend this law for an extended period of time. We have been willing to extend the law for a limited period of time.

I think what this all boils down to is that we should extend the law for a long period of time because the only issue—there are other issues, of course, but the main issue is whether there will be retroactive immunity for the phone companies. That is what it all boils down to—whether there is going to be retroactive immunity to the phone companies. Some of us don't think that is appropriate; others think it is appropriate.

So why don't we extend this law for an extended period of time? That way, the new targets could be sought if, in fact, they are out there—and we all believe there are some, and that is necessary to be done—and then set up a time. We will agree to a time and have

a debate on the immunity provisions and see if the Senate and the House are willing to give retroactive immunity. In the bill my distinguished colleague, the Republican leader, talked about that came from the Intelligence Committee, that is in that bill. That is in their bill that came from committee. What the House has done doesn't have it in there. So why don't we have a debate on that issue and just extend the law? We will extend it until there is a new President. We are fine—we are happy to do that—so that we get off this: We can't do the targets. Why don't we just extend it for a period of time, and then our side will agree to try to work out something legislatively so that we can have a real nice debate on retroactive immunity.

Mr. DURBIN. Mr. President, will the majority leader yield for a question?

Mr. REID. I am happy to yield.

Mr. DURBIN. Mr. President, I would like to ask the Senator if he could recap for me two votes that I think are significant. There was a vote taken as to whether the Judiciary Committee version would be accepted. A cloture vote was taken, if I am not mistaken, and it was defeated. If I am not mistaken, that was last week. And if I am not mistaken as well, yesterday, when Senator McCONNELL offered a cloture motion to promote his point of view, there were only 48 votes in support of it out of the 60 that were necessary—4 from our side of the aisle, 44 from the Republican side.

It seems to me we need to put our heads together to work this out. Extending this law so that there is no damage or hazard to our country is a reasonable way to do this. We now have reached a point where amendments may be considered and voted on, and then we will be in a spot where we can pass a version in the Senate, send it to conference, and work out our differences. But I can't understand how the President and the Republican leader can come to the floor and blame us for the expiration of the law if we are offering an extension of the law and they keep refusing.

Mr. REID. Mr. President, I say to my friend, the distinguished Senator from Illinois, I personally have been to the floor and offered on many occasions to extend the time. We could all see the train wreck coming, and we believed that it was necessary to extend this law.

I don't know—I say very positively to my friend from Illinois and everyone who can hear me—I don't know if we can work anything out on these amendments. I don't know. On the title I aspect of it, one Senator has six amendments. I am sure—he has always been a reasonable person—he wouldn't have to offer that many. He has always been very good about time agreements. But there are 10 or 12 amendments to title I. Then there are three we have with title II dealing with some form of immunity.

But I repeat to my friend, Democrats believe the program should continue.